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TUHOLSKE LAW OFFICE, P.C.

Jack R. Tuholske

1149 Harrison Street, P.O. Box 7458,
Missoula, Montana 59802/07
Telephone: 406-396-6415
jtuholske@gmail.com
jtenvirolaw.com

April 5, 2016

Via CERTIFIED MAIL RETURN RECEIPT REQUESTED
and First Class mail with Tracking

Steven and Pat Cole
28 Cole Lane
Joliet Montana, 59041

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Shaun McGrath
US EPA, Region 8
999 18th St., Ste 300,
Denver CO 80202-2466

Loretta Lynch, Attorney General
United States Department of Justice
950 Pennsylvania N.W.
Washington D.C. 20530-0001

Tom Livers Director
Montana Department of Environmental Quality
1520 E. Sixth Ave.
Helena, MT 59620

Col. John Buck(COL)
U.S. Army Corps of Engineers
Northwest Division, Seattle District
4735 E Marginal Way S.
P.O. Box 3755
Seattle, WA 98124-3755/98134

Re: Notice of Violations and Intent to File Suit under the Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 et seq.

Dear Mr. and Mrs. Cole et al.:

This letter is written on behalf of Hannelore and Ervin Sharbono, and constitutes a **Notice of Violation and Intent to File Suit** under the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*, also known as the Clean Water Act ("CWA"). This notice is provided pursuant to Section 505(b) of the CWA, 33 U.S.C. § 1365(b), which requires that 60 days prior to the initiation of a civil action under Section 505(a) of the CWA, 33 U.S.C. § 1365(a), a citizen must give notice of intent to sue and the alleged violations. The Sharbonos, through their undersigned counsel, hereby give Steve and Pat Cole and the other parties to this letter, formal notice of their intent to consider commencing a civil action against Steven and Pat Cole under Section 505 of the Clean Water Act ("CWA") sixty days from the date of this letter unless the actions described below are taken to remedy the violations of the CWA. Such Notice is a jurisdictional prerequisite to filing suit if such action becomes necessary, and the violations are not rectified.

We ask that you correct violations which have resulted from unpermitted discharges of dredged or fill material in wetlands associated with road building, infilling, channelization and other construction activities on owned by Steven and Pat Cole in Carbon County, Montana. The tract of land located in the NE ¼ of the NW ¼ of the SE ¼ of Section 36, T 3S, R 23 E, at the physical address above, as depicted on the attached maps and photographs.

The Coles have applied for and received a permit from the Corps, and the Montana DNRC to create a pond on said property. That permit was issued long ago. However, it has come to my clients' attention that at some point that Coles have undertaken fill activities in what are jurisdictional waters far in excess of their permit, including filling wetlands and streambank alteration that have resulted in an unnatural alteration of the hydrology of the area to my clients' detriment and to the detriment of the natural environment. The Sharbonos have water rights that have been significantly impacted by the Cole's disruption of the natural hydrology. The additional, unpermitted fill areas constitute unpermitted, on-going violations of the CWA. The areas of violations include the Cole Parking Area, and the Cole Bank Improvements. These violations constitute some, but perhaps not all of the violations outside the bounds on any permit issued by the Corps. Because the Coles do not provide access to their private property, and because the geography of the area is such that these unpermitted activities are shielded from public view, it is not possible to fully define them without further investigation.

I attach a CD with photographs and maps that show the areas of the violations on the Cole property. This CD was prepared by Mr. Lee Yelin, of Water Rights Inc. Mr. Yellin is an acknowledged expert in the field of water rights and hydrology. These photos and maps depict the changes by the Coles outside the bounds of any legally permitted changes.

These activities were undertaken within Waters of the United States as defined by Corps and EPA guidance following the *Rapanos* decision, as well as the current rule that has been stayed by federal court order, as the activities substantially affect an unnamed tributary of the Clarks Fork of the Yellowstone River, and adjacent wetlands, which are jurisdictional waters under any of these definitions.

Section 404 of the CWA prohibits the discharge of dredged or fill material into the navigable waters without a permit from the U.S. Army Corps of Engineers. 33 U.S.C. §§ 1311, 1344. "Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was

not previously subject, where the flow and circulation of waters may be impaired or the reach of such waters reduced, shall be required to have a permit under this section.” 33 U.S.C. § 1344(f)(2). The Act defines “navigable waters” as “waters of the United States” and includes wetlands. 33 U.S.C. § 1362(7); 33 C.F.R. § 328.3; 40 C.F.R. § 230.3(s). “Discharge” is “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362 (12). A point source is “any discernible, confined and discrete conveyance ...from which pollutants are or may be discharged.” 33 U.S.C. § 1362 (14). A pollutant is defined, inter alia, as “dredged spoil, ... biological materials, ... rock, sand, [and] cellar dirt.” 33 U.S.C. § 1362 (6). The Coles did not procure a permit to discharge dredged or fill material into an unnamed tributary of the Clarks Fork of the Yellowstone and adjacent wetlands or exceeded the bounds of any permits lawfully obtained.

Land disturbance and construction activities, such as mechanized land clearing, road building, channelization, and infilling activities that have occurred on the subject tract of land have resulted in the destruction, infill and degradation of wetlands, destruction and infill of lake shores and intermittent streams and significant discharge into navigable waters. Borden Ranch P’ship v. United States Corps of Army Eng’rs, 261 F.3d 810 (9th Cir. 2001). These discharges are occurring without permits or authorization in violation of sections 301 and 404 of the Clean Water Act. The Coles have failed to avoid or minimize impacts to wetlands. These discharges in violation of the CWA are continuous and ongoing.

In addition to the violations set forth above, this notice covers any and all violations of the CWA by the Coles evidenced by information that becomes available to my clients after the date of this **Notice of Intent to File Suit**, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, each of the above-described violations of the CWA subjects the violator to a penalty of up to \$37,500 per day per violation for violations occurring after the date of this letter and relating back to the date of the original violation. In addition to civil penalties, my clients may seek injunctive relief preventing further violations of the CWA pursuant to Sections 505(a) & (d), 33 U.S.C. § 1365(a) & (d), and such other relief as is permitted by law including restoration of the site. Lastly, Section 505(d) of the CWA, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs and attorneys’ and expert witness fees.

Upon information and belief, my clients believe other violations may be occurring. We request that all activities that cause or result in the discharge of dredged or fill material or pollutants into wetlands and surface waters cease immediately. We further request that the Coles correct ongoing violations of the Clean Water Act which have resulted from the unpermitted discharges into waters and wetlands.

We sincerely hope that this situation can be resolved without resort to litigation, however we provide the following information in order to secure a right to file suit under the Clean Water Act in the event that we are unable to resolve this situation outside of court.

The contact information for the complaining parties is:

Ervin and Hannalore Sharbono
198 Grapevine Road
Joliet MT 58041

406 396 6415 (attorney's phone is the contact phone)

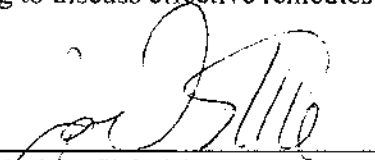
The Sharbonos have retained legal counsel to represent them in this matter. All communications should be addressed to:

Jack Tuholske
Tuholske Law Office
P.O. Box 7458
Missoula, MT 59807
(406) 396-6415
jtuholske@gmail.com

My clients believe that this **Notice of Intent to File Suit** sufficiently states grounds for filing suit. We retain the right, at the close of the 60-day notice period or at any time thereafter, to file a citizen suit under Section 505(a) of the CWA.

During the 60-day notice period, we would be willing to discuss effective remedies and civil penalties for the violations noted in this letter.

Sincerely,



Jack R. Tuholske
Attorney for the Sharbonos